

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAY BURDETTE,

Plaintiff,

v.

TECH MAHINDRA (AMERICAS) INC.,

Defendant.

NO. 2:16-CV-01151-JLR

**STIPULATED MOTION AND
PROTECTIVE ORDER**

Note Date: May 3, 2017

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. CONFIDENTIAL MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

1 (a) Confidential information relating to the work performed by Tech Mahindra or
2 its parent, Tech Mahindra Limited, for AT&T, including but not limited to business plans and
3 any agreements or statements of work for AT&T;

4 (b) AT&T financial information;

5 (c) Confidential technical information or specifications, scenarios, modelling, and
6 proposals;

7 (d) Information that the designating party reasonably believes constitutes, reflects,
8 or discloses trade secrets, proprietary data, or commercially sensitive information;

9 (e) Information about employees or contractors that is treated as confidential by the
10 designating party or by Tech Mahindra or Tech Mahindra Limited's customers, vendors, or
11 others with whom it does business;

12 (f) Information subject to confidentiality agreements with third parties or pre-
13 existing confidentiality agreements between the parties;

14 (g) Plaintiff's tax returns and information used in preparation of those tax returns;

15 (h) Plaintiff's medical records.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (a) any information copied or extracted from confidential material; (b)
19 all copies, excerpts, summaries, or compilations of confidential material; and (c) any testimony,
20 conversations, or presentations by parties or their counsel that might reveal confidential
21 material. However, the protections conferred by this agreement do not cover information that is
22 in the public domain or becomes part of the public domain through trial or otherwise.

23 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

24 4.1 Basic Principles. A party may use material that is designated as confidential by
25 another party or by a non-party in connection with this case only for prosecuting, defending, or
26 attempting to settle this litigation. Confidential material may be disclosed only to the
27 categories of persons and under the conditions described in this agreement. Confidential

1 material must be stored and maintained at a location and in a secure manner that ensures that
2 access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a non-designating party
5 may disclose any confidential material only to:

6 (a) the non-designating party's counsel of record in this action, as well as employees
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the non-
9 designating party to whom disclosure is reasonably necessary for this litigation, unless the
10 parties agree that a particular document or material produced is for Attorney's Eyes Only and is
11 so designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for this
13 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
14 A);

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of
17 confidential material, provided that counsel for the party retaining the copy or imaging service
18 instructs the service not to disclose any confidential material to third parties and to immediately
19 return all originals and copies of any confidential material;

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
21 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
22 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal confidential material
24 must be separately bound by the court reporter and may not be disclosed to anyone except as
25 permitted under this agreement;

26 (g) the author or recipient of a document containing the information or a custodian
27 or other person who otherwise possessed or knew the information.

1 4.3 Filing Confidential Material. Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party
3 to determine whether the designating party will remove the confidential designation, whether
4 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
5 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
6 standards that will be applied when a party seeks permission from the court to file material
7 under seal.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
10 party or non-party that designates information or items for protection under this agreement
11 must take care to limit any such designation to specific material that qualifies under the
12 appropriate standards. The designating party must designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify, so that other
14 portions of the material, documents, items, or communications for which protection is not
15 warranted are not swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
18 unnecessarily encumber or delay the case development process or to impose unnecessary
19 expenses and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it designated
21 for protection do not qualify for protection, the designating party must promptly notify all other
22 parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies
25 for protection under this agreement must be clearly so designated: (a) at the time the material
26 is first disclosed or produced if the designation is by the disclosing or producing party; or (b)
27 within a reasonable time thereafter, if disclosed or produced by the non-designating party or (c)

1 within a reasonable time after this Protective Order is entered by the Court regarding discovery
2 material produced by a party prior to the entry of this Protective Order.

3 (a) Information in documentary form: (e.g., paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
6 contains confidential material. If only a portion or portions of the material on a page qualifies
7 for protection, the designating party also must clearly identify the protected portion(s) (e.g., by
8 making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
10 parties must identify on the record, during the deposition, hearing, or other proceeding, all
11 protected testimony, without prejudice to their right to so designate other testimony after
12 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
13 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

14 (c) Other tangible items: the designating party must affix in a prominent place on
15 the exterior of the container or containers in which the information or item is stored the word
16 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
17 protection, the designating party, to the extent practicable, shall identify the protected
18 portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the designating
21 party's right to secure protection under this agreement for such material. Upon timely
22 correction of a designation, the receiving party must make reasonable efforts to ensure that the
23 material is treated in accordance with the provisions of this agreement.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
5 regarding confidential designations without court involvement. Any motion regarding
6 confidential designations or for a protective order must include a certification, in the motion or
7 in a declaration or affidavit, that the movant has engaged in a good-faith meet-and-confer
8 conference with other affected parties in an effort to resolve the dispute without court action.
9 The certification must list the date, manner, and participants to the conference. A good-faith
10 effort to confer requires a face-to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
12 intervention, the designating party may file and serve a motion to retain confidentiality under
13 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
14 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
15 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
16 burdens on other parties) may expose the challenging party to sanctions. All parties shall
17 continue to maintain the material in question as confidential until the court rules on the
18 challenge.

19 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
20 LITIGATION

21 If a party is served with a subpoena or a court order issued in other litigation that
22 compels disclosure of any information or items designated in this action as
23 "CONFIDENTIAL," that party must:

24 (a) promptly notify the designating party in writing and include a copy of the
25 subpoena or court order;

1 (b) promptly notify, in writing, the party who caused the subpoena or order to issue
2 in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this agreement, with the notice to include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
5 designating party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a non-designating party learns that, by inadvertence or otherwise, it has disclosed
8 confidential material to any person or in any circumstance not authorized under this agreement,
9 the non-designating party must immediately (a) notify in writing the designating party of the
10 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
11 protected material, (c) inform the person or persons to whom unauthorized disclosures were
12 made of all the terms of this agreement, and (d) request that such person or persons execute the
13 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a designating party gives notice to non-designating parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection, the
18 obligations of the non-designating parties are those set forth in Federal Rule of Civil Procedure
19 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established
20 in an e-discovery order or agreement that provides for production without prior privilege
21 review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

22 10. NON-TERMINATION AND RETURN OF DOCUMENTS

23 Within 60 days after the termination of this action, including all appeals, each non-
24 designating party must return all confidential material to the designating party, including all
25 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
26 methods of destruction. Notwithstanding this provision, counsel are entitled to retain one
27 archival copy of all documents filed with the court, trial, deposition, and hearing transcripts,

correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: May 3, 2017.

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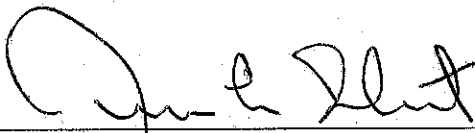
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 8 May 2017



Hon. James L. Robart
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court
for the Western District of Washington on [date] in the case of *Burdette v. Tech Mahindra*
(Americas) Inc., 2:16-CV-01151-JLR. I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order. I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____